



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 6, 1992

Mr. James R. Raup
McGinnis, Lochridge & Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR92-409

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 14585.

The Austin Independent School District, which you represent, has received a request for all information relating to a former district employee. Specifically, the requestor seeks:

- (1) personnel file and any other personnel records regarding [the former employee]; and
- (2) all records, reports, letters, correspondence, evaluations, appraisals, reviews, investigations and any other documents regarding [the former employee] or his employment and the termination of his employment with the Austin Independent School District.

You seek to withhold the requested information under Open Records Act sections 3(a)(1), 3(a)(2), 3(a)(11), and 3(a)(14).

Some of the requested information is subject to the Family Educational Rights and Privacy Act (FERPA), which prohibits the release of "education records" to persons other than a student's parents. 20 U.S.C. § 1232g(b)(1); *see also* V.T.C.S. art. 6252-17a, §§ 3(a)(14), 14(e) (incorporating the requirements of FERPA into the Open Records Act). Any portions of the documents that identify or tend to identify

students must be withheld under FERPA. The polygraph report dated May 26, 1989, and the correspondence dated June 5, 1989, from Alberto Garcia must be withheld, except for "directory information," which may be released to the requestor.¹ See *id.* § 1232g(a)(4)(B), (a)(5); Open Records Decision No. 431 (1985) (copy enclosed). We have marked the information that may not be released as directory information.

Information may be withheld on common-law privacy grounds under sections 3(a)(1) and 3(a)(2) if it is highly intimate or embarrassing and is of no legitimate concern to the public. Most of the requested information relates to the on-the-job conduct of a district employee and is therefore of legitimate public concern. Such information cannot be withheld on the basis of common-law privacy. See Open Records Decision No. 470 (1987). We have marked information on one page that is private and must be withheld.

Finally, you claim that some of the requested information is excepted from required public disclosure by section 3(a)(11), which excepts memoranda and letters to the extent that they contain advice, opinion, or recommendation intended for use in the governmental body's policy-making or deliberative process. Open Records Decision No. 466 (1987) at 1 (copy enclosed). We have marked the information that may be withheld under section 3(a)(11).² See also Open Records Decision No.

¹ "Directory information" must be released provided that the educational agency gives public notice of the categories of information which it has designated as such information and allows a reasonable period of time after notice has been given for a parent to inform the agency that information shall not be released without the parent's prior consent. 20 U.S.C. § 1232g(a)(4)(B)-(a)(5). Please address any queries regarding FERPA to:

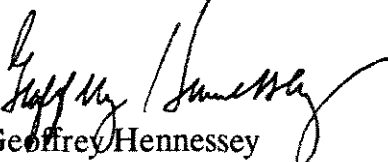
Family Policy and Regulations Office
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202.

² We further note that section 19A of V.T.C.S. article 4413(29cc), which is incorporated by Open Records Act section 3(a)(1), provides for the confidentiality of information related to polygraph examinations. The polygraph examination in question here was administered by polygraph examiners for the attorney of the former district employee. Subsequently, the attorney voluntarily provided the district the results of the polygraph examination. The confidentiality requirements of section 19A do not apply in this situation. Information on the test results that identifies or tends to identify students is governed by FERPA. See generally Open Records Decision No. 191 (1978).

559 (1990) (copy enclosed). (A draft of a document which has been or is intended for release may be withheld under section 3(a)(11).)

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-409.

Yours very truly,


Geoffrey Hennessey
Assistant Attorney General
Opinion Committee

GH/GK/lmm

Ref.: ID# 14585

Enclosures: Marked Documents
Open Records Decision No. 559, 466, 431

cc: Mr. Philip E. McCleery
Sheehy, Lovelace & Mayfield, P.C.
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Waco, Texas 76701
(w/o enclosures)